In the High Court of Judicature at Madras

Dated: 24/11/2004

Coram

The Honorable Mr.Justice V.KANAGARAJ

Crl.R.C.No.1430 of 2004 and Crl.R.C.No.1431 of 2004

Lalitha @ Kateeja ... Petitioner in
both the cases

-Vs-

The State rep.by
The Sub Inspector of Police,
Sankari P.S
Sankari,
Salem District ... Respondent in
both the cases

Prayer: Revisions filed under Sections 397 and 401 of Criminal Procedure Code for the prayer stated therein.

For petitioner : Mr.C.Kulanthaivel

For respondent : Mr.V.Jayaprakashnarayanan
Govt.Advocate(crl.Side)

:O R D E R

The above revision cases are filed respectively, to set aside the the order dated 07.4.2004 passed in C.M.P.Nos.1260 and 1192 of 20 04 in Cr.No.149 of 2004 on the file of the Court of the Judicial Magistrate NO.1, Sankari.
2. These are the cases in which the only issue that arises for consideration is the custody of the minor daughter of the petitioner alleged to have been kidnapped by one Jayaseelan residing nearby her resident. After the kidnap, the girl was recovered. The question as to with whom she has to be sent arose before the learned Magistrate since both the mother and her aunt namely one Kanyakumari started claiming the custody of the girl. In consideration of both the applications seeking custody of the minor girl the trial Court has examined the girl who answered that she was not willing to go along with her mother but only to her aunt Kanyakumari though she was not her mother but one who brought her up. But her mother though a natural guardian did not bring her up nor responsible for her custody but the said Kanyakumari being more responsible than her mother would choose to go along with her and hence the learned Magistrate has decided entrusting the custody of the minor girl with the said Kanyakumari thus ensuring safe custody of the minor girl.
It is this order passed by the learned Judicial Magistrate No.I, Sankari,

which is under challenge in the above criminal revision cases.

3. Heard both.

4. Learned counsel appearing on behalf of the petitioner,
citing Section 98 of the Code Criminal Procedure, would submit that it is a natural guardian who is entitled to have the custody of the minor girl but on a reading of Section captioned, Power to compel restoration of abducted females, would recite that the Magistrate may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance of, with such order, using such force as may be necessary. Therefore if it is a case of the major, to her choice; and if it is the case of a minor, to those persons named, including those who are "having the lawful charge of the said child".

3. Here is a case, wherein the learned Magistrate has
entrusted the kidnapped minor girl only to her aunt Kanyakumari who was actually having the charge of the minor girl even according to the statement of the minor girl herself before the Magistrate and therefore there is nothing wrong in entrusting the custody of the minor girl with her aunt Kanyakumari, particularly, when the minor expressed her willingness to go along with her aunt and not her mother and hence the learned Magistrate dismissed the petition filed by the mother of the minor child and allowed the petition filed by the aunt Kanyakumari with whom custody of the minor was entrusted.

In result,

i) the criminal Revision Cases fail and only liable to become
dismissed and the same are dismissed as such.

Index :Yes
Internet :Yes

kvsg

To
1.The Sub Inspector of Police,
Sankari P.S
Sankari,
Salem District

2.The Judicial Magistrate No.I,
Sankari.

3) The Public Prosecutor,
High Court, Madras.